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In the High Court of Judicature at Madras

Dated: 09.10.2006

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The Honourable Mr.JUSTICE R.BALASUBRAMANIAN
and
The Honourable Mr.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.30 of 2004

Commissioner of Income Tax
Coimbatore. .... Appellant

Vs.

M/s. Super Spinning Mills Ltd.,
Coimbatore. .... Respondent

APPEAL under Section 260A of the Income Tax Act against the order dated 28.11.2002 made in I.T.A.No.936(Mds)/97 on the file of the Income Tax Appellate Tribunal Madras 'A' Bench for the assessment year 1993-94 against the order of the Commissioner of Income-Tax (Appeals) Coimbatore dated 25.2.1997 in IT Appeal No.257-C/96-97 against the order of the Deputy Commissioner of Income-Tax, Special Range-II, Coimbatore dated 25.3.1996 in PANGIR No.CY2486.

For Appellant : Mr. J.Narayanasamy

For Respondent : No appearance

J U D G M E N T

(Judgment of the Court was delivered by
P.P.S.JANARTHANA RAJA,J)

The Revenue has filed this appeal under Section 260A of the Income Tax Act against the order dated 28.11.2002 made in I.T.A.No.936(Mds)/97 on the file of the Income Tax Appellate Tribunal Madras. When the appeal came up for hearing, this Court has admitted the same on the following substantial questions of law:

"i. Whether in the facts and circumstances of the case, the Tribunal was right in law in holding that the power subsidy received from the electricity board should be treated as capital receipt?

ii. Whether in the facts and circumstances of the case, the Tribunal was right in law in holding that the

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"front and fee" in respect of loan borrowed for expansion of a unit is to be deducted as revenue expenditure?"

2. The brief facts arising out of the above tax case are as here under:

The assessee filed a return of income on 31.12.1993 and revised return on 30.12.1994 both admitting 'Nil' income. The assessing officer issued notice under Section 143(2) of the Income Tax Act on the assessee and later, assessment was completed by the Assessing Officer determining the total income at Rs.3,33,836/-. He treated the power subsidy received from the Government as a revenue receipt and also disallowed the expenditure of "front end fee" as capital expenditure. Aggrieved by the order of the assessing officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) allowed the appeal and set aside the order of the assessing officer. Aggrieved by the same, the Revenue filed an appeal before the Income Tax Appellate Tribunal. The Tribunal dismissed the appeal filed by the Revenue and confirmed the order of the C.I.T.(A).

3. Inspite of notice served on the respondent, there is no representation on behalf of the respondent.

4. In respect of Question No.1, Learned standing counsel appearing for the Revenue submitted that the issue is covered by a judgment of the Supreme Court reported in 251 ITR 427 (C.I.T. Vs. Rajaram Maize Products). Following the same, we answer Question No.1 in favour of the Revenue and against the assessee.

5. In respect of question No.2, learned standing counsel submitted that the impugned amount was incurred for obtaining loan for the purpose of setting up an unit and hence it is only a capital expenditure. He further submitted that the Tribunal erred in following the ratio of the Supreme Court judgment reported in 227 ITR 465 in the case of Sivakami Mills, wherein the Supreme Court dealt with guarantee commission and not with "front end fee" or loan processing charges.

6. Heard the counsel. During the year of account the assessee obtained sanction for a term loan of Rs.820 lakhs from IDBI. While availing the above loan, the assessee incurred a sum of Rs.8.20 lakhs towards "front end fee payment" at the rate of 1% on the loan amount. Without paying the above said amount, the IDBI may not have sanctioned the loan amount for setting up the new unit at Gudalur. Here the amount is paid only for obtaining the loan and hence the same does not bring into existence any asset on an enduring nature. If interest paid on borrowed amount could be held to be revenue expenditure, we fail to see how the present amount incurred for

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obtaining loan for setting up of a new unit, could be regarded as capital payment. It is the condition precedent for obtaining the loan and also it is the nature of processing fees for the bank to release the loan incurred for the purpose of the business and hence the same is only revenue expenditure. The Tribunal correctly followed the principle enunciated in the judgment reported in 227 ITR 465 and decided the case in favour of the assessee. We find no error or legal infirmity in the order of the Tribunal, so as to warrant interference. Accordingly, we answer the second question in favour of the assessee and against the Revenue.

7. With the above observation, the tax case is disposed of. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant Registrar, Income-tax Appellate Tribunal, Rajaji Bhavan,Besant Nagar, Chennai 600 090.

2. The Income Tax Appellate Tribunal Madras "A" Bench, Chennai.

3. The Deputy Commissioner of Income Tax, Special Range II, Coimbatore.

4. The Commissioner of Income Tax (A), Coimbatore.

5. The Commissioner of Income Tax, Coimbatore.

+1cc to Mr.N.Muralikumaran Sr. Standing Counsel for Income Tax Sr 46923

BV (CO)
km/26.10.

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